

REMARKS

The claims have been amended by rewriting claims 1 and 13. Claims 1-18 remain in the application. No new matter has been added. **The draftsperson's review of the drawings appears to be missing.** Corrections to the drawings, shown in "red," are enclosed for approval by the Examiner. In FIG. 5, mislabeled designator 218 has been relabeled as 220. FIGs. 3-6 have been amended to include designator 400 (supported by page 6, line 28 of the Specification. It is respectfully requested that the submission of corrected formal drawings be delayed until such time as the application is deemed to be in condition for allowance.

Reconsideration of this application is respectfully requested.

Rejection - 35 U.S.C. § 112, first paragraph:

Claims 16-18 were rejected under 35 U.S.C. § 112, first paragraph.

The Specification has been amended to incorporate the language of claims 16, 17, and 18 to overcome this rejection. No new matter has been added. Specifically, the "first section" described in claim 16 has been introduced and labeled by designator 318 on page 4 of the Specification in the paragraph located between lines 14-20. The Specification has also been amended on page 7, first paragraph with three additional sentences. Support for these three sentences is found in claims 16, 17, and 18.

Claim Rejections - 35 U.S.C. § 112, second paragraph:

Claims 13 and 16-18 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 has been amended to remove the body part language from its claimed format.

As to the rejection of claims 16-18, FIG. 3 has been amended to include designator 318 indicating the first section (also referred to as the concave inner surface on page 4, lines 17-20 as amended). Further support for the first section language is now found on page 7, lines 3-12 as amended. Accordingly, the rejection under § 112, second paragraph second is now overcome.

Claim Rejections - 35 U.S.C. § 102(b):

Claims 1-7, 9-13, and 15-18 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Henderson '923 or Jelonek et al. '830.

Claim 1 has been amended to include the term “non-occluded” to more clearly define the manner of sound delivery to the ear. Support for this amendment is found on Page 5, lines 7-12. Both of the cited references are based on an “occluded” (plugged) ear canal opening, which is required in the hearing aid market to eliminate external sound from entering the ear canal and resulting in regenerative feedback (see Henderson, FIGS. 9, 10, & 13. See Jelonek, FIG. 1). The occluded nature of the cited references completely closes off the ear to outside air, creating a humid environment conducive to excess perspiration. Due to this perspiration, the degree of retention is compromised. This disadvantage was discussed in Applicant’s Background section on page 2, line 12. Applicant’s invention provides for a non-occluded (not plugged or impeded) ear canal opening, to permit normal stereo hearing, with no ambient sound blockage. Accordingly,

the rejection under § 102(b) is overcome. Claims 2-18 provide further limitations to what is believed to be an allowable claim 1 (as amended) and hence are also in condition for allowance.

Claim Rejections - 35 U.S.C. § 103:

Claims 8 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Henderson '923 or Jelonek et al. '830

Claims 8 and 14 are dependent claims that provide further limitations to what is believed to be an allowable claim 1. Hence, the rejection of claims 8 and 14 are in condition for allowance.

Accordingly, this application is believed to be in proper form for allowance and an early notice of allowance is respectfully requested.


Please charge any fees associated herewith, including extension of time fees, to 50-2117.

Respectfully submitted,

SEND CORRESPONDENCE TO:

Motorola, Inc.
Law Department

Customer Number: 24273

By: 
Barbara R. Dautre
Attorney of Record
Reg. No.: 39,505
Telephone: 954-723-6449
Fax No.: 954-723-5599
Email: barbara.dautre@motorola.com